STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Wheaton Sanitary District	:	
	:	
Request for Declaratory Ruling	:	**02-0345**
Concerning the Underground	:	
Facilities Damage Prevention Act	:	
(220 ILCS 50).	:	

PROPOSED ORDER

By the Commission:

I. INTRODUCTION

On May 8, 2002, the Wheaton Sanitary District ("WSD") filed with the Illinois Commerce Commission ("Commission") a request for a declaratory ruling pursuant to 83 Ill. Adm. Code 200.220. Specifically, WSD seeks a ruling that sanitary districts are not required to participate in the State-Wide One-Call Notice System ("System") provided for in the Illinois Underground Utility Facilities Damage Prevention Act ("Act"), 220 ILCS 50/1 et seq., on the grounds that it is not an owner or operator of "underground utility facilities" under the Act.

Only J.U.L.I.E., Inc. ("JULIE"), the administrator of the System, filed a petition to intervene. The petition was granted. JULIE and Commission Staff ("Staff") each filed a response to the request. Staff and WSD each filed a reply to the responses. No hearings were held in this matter. The Commission will dispose of the request on the basis of the written submissions before it in accordance with Section 200.220(h).

II. POSITIONS

A. WSD's Position

WSD recognizes that Section 3 of the Act requires all owners or operators of "underground utility facilities" to participate in the System. In defining "underground utility facilities," Section 2.2 of the Act states:

> "Underground utility facilities" or "facilities" means and includes wires, ducts, fiber optic cable, conduits, pipes, sewers, and cables and their connected appurtenances installed beneath the surface of the ground by a public utility (as is defined in the Illinois Public Utilities Act, as amended), or by a municipally owned or mutually owned utility providing a similar utility service, except an electric cooperative as defined in the Illinois Public Utilities Act, as amended, or by a pipeline entity transporting

> gases, crude oil, petroleum products, or other hydrocarbon materials within the State or by a telecommunications carrier as defined in the Universal Telephone Service Protection Law of 1985, or by a company described in Section 1 of "An Act relating to the powers, duties and property of telephone companies", approved May 16, 1903, as amended, or by a community antenna television system, hereinafter referred to as "CATS", as defined in the Illinois Municipal Code, as amended.

The three categories within which sanitary districts might fall, according to WSD, are (1) public utilities, as defined by the Public Utilities Act, 220 ILCS 5/1-101 et seq., (2) municipally owned utilities, and (3) mutually owned utilities. WSD maintains that sanitary districts do not fall under any of these categories.

1. Public Utilities

WSD cites part of the definition of "public utility" in the Public Utilities Act in support of its argument that it is not a public utility. Specifically, WSD points out that Section 3-105 of the Public Utilities Act states, in part, that:

> "Public utility" does not include, however: (1) public utilities that are owned and operated by any political subdivision, public institution of higher education or municipal corporation of this State, or public utilities that are owned by such political subdivision, public institution of higher education, or municipal corporation and operated by any of its lessees or operating agents;

WSD relies on In Re Village of Godfrey for the proposition that "a political subdivision cannot be restricted to mean a municipality but also applies to other governing bodies such as districts." 243 Ill.App.3d 915, 921, 612 N.E.2d 870, 875, 183 Ill. Dec. 943, 947 (5th Dist. 1993) Because WSD considers itself a "political subdivision" of the State, it concludes that it is not a "public utility" under the Public Utilities Act.

2. Municipally Owned Utilities

The issue with regard to the term "municipally owned utility," according to WSD, is whether "municipally owned" means "municipality" or "municipal corporation." A "municipality," WSD asserts, is a city, village, or incorporated town. A "municipal corporation," in WSD's opinion, is a public corporation or machinery of government. WSD argues that municipalities are simply one of a number of types of municipal corporations, which it equates with "units of local government." WSD avers that the Illinois Constitution distinguishes between municipalities and municipal corporations/ units of local government. Article VII, Section 1 of the Illinois Constitution defines "municipalities" and "units of local government" and provides:

> "Municipalities" means cities, villages and incorporated towns. "Units of local government" means counties, municipalities, townships, special

> districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts.

WSD interprets this section of the Illinois Constitution to mean that sanitary districts may not be considered "municipalities" under Illinois law, but instead are "units of local government." As the latter, WSD maintains that it can not be said to be a "municipally owned utility."

WSD does not dispute JULIE's assertion that WSD is a municipal corporation, but insists that there are multiple subsets of municipal corporations. WSD notes that Black's Law Dictionary defines "municipal corporation" as "a public corporation, created by government for political purposes, and having subordinate and local powers of legislation." One subset of municipal corporations is municipalities while another is sanitary districts, according to WSD. Other subsets include counties and townships. WSD argues, however, that "municipal corporation" does not equate with "municipality," i.e., cities, villages, and incorporated towns.

When the General Assembly used the term "municipally owned," WSD contends that it meant the term to refer to "municipality" in the more specific manner outlined in the Illinois Constitution. If the General Assembly had intended that sanitary districts should be included, WSD asserts that the Act would have stated that it applies to all municipal corporations, i.e., "municipal corporation owned utility." In addition, WSD asserts that Section 14 of the Act distinguishes between "municipalities" and "units of local government." WSD bases this claim on language in Section 14 providing that, "[a]ll units of local government, including home rule units, must comply with the provisions of this Act." This wording, WSD states, recognizes that "units of local government" cover a different group of entities than "municipalities." If the General Assembly intended Section 2.2 of the Act to apply to underground facilities installed by sanitary districts (or other units of local government), WSD insists that it would have so stated. Instead, WSD posits that the General Assembly decided to limit its applicability to those entities and facilities explicitly identified in Section 2.2. To read the statute any other way, WSD opines, would violate the rule of statutory construction which requires the statute be read as a whole with each word, clause, and section being attributed with meaning so as to avoid rendering any part of the statute as being superfluous.

In addition, WSD asserts that sanitary districts are created under and governed by the Special Districts Act of 1917, 70 ILCS 2405/0.1 et seq., rather than Chapter 65 of the Illinois Compiled Statutes, which governs municipalities. WSD contends that Section 1 of the Sanitary District Act acknowledges the difference between "municipalities" and "units of local government."

As for JULIE's argument that the request for declaratory relief is premature, WSD maintains that the Commission has jurisdiction over its request given the imminent effective date in the Act (July 1, 2002) on which the Commission's authority begins.

3. Mutually Owned Utilities

WSD briefly addresses mutually owned utilities since it believes that it is clear that it does not qualify as such. WSD explains that a mutually owned organization is a type of entity where members act as owner-patrons. Examples of such entities, WSD continues, are cooperatively owned water systems and certain credit unions. Sanitary districts, by contrast, are political subdivisions of the state, not mutually owned utilities, according to WSD.

B. JULIE's Position

JULIE opposes the ruling sought by WSD and argues that granting the requested relief would result in confusion to contractors, homeowners, and the like who seek to implement the System to ensure that harm is not caused to person or property. Such a position is not only against public interest, JULIE continues, but also contravenes the purpose of the Act which was codified to ensure participation by utilities. As a preliminary matter, JULIE argues that WSD's request is premature since the Commission's authority to enforce the Act is not effective until July 1, 2002. Because WSD's request comes before the Commission can enforce the terms of the Act, JULIE recommends that WSD's request be stricken.

In the event that the Commission finds that it does have jurisdiction over WSD's request, JULIE maintains that WSD falls within the definition of "municipally owned utility." JULIE asserts that it is important to note that the term "municipality" is not limited solely to cities, towns, and villages as espoused by WSD. The term "municipality," JULIE contends, has long been found to include districts and other governmental subdivisions. In support of this position, JULIE cites Greene County Planning Board v. Federal Power Comm., 528 F2d 38, fn 20 (1975), which references the definition of "municipality" in the Federal Power Act, 16 U.S.C. 796(7) . JULIE also directs the Commission's attention to Black's Law Dictionary, which JULIE notes does not limit the term "municipality" to villages, cities, and towns. JULIE recites Article 7, Section 1 of the Illinois Constitution as well. In light of these varied sources, JULIE concludes that the term municipality is not limited as suggested by WSD.

With this in mind, JULIE states that the issue to be considered is whether or not WSD or other sanitary districts can be considered municipalities. This question, JULIE reports, has been addressed by the Illinois Supreme Court on two separate occasions—Chicago & E.I. RY. Co., et al. v. Sanitary Dist. of Bloom Township, 350 Ill. 542, 183 N.E. 585 (1932) and Saline Branch Dist. v. Urbana-Champaign Sanitary Dist., 395 Ill. 22nd, 69 N.E.2d 251 (1946). In both instances a sanitary district was classified as a municipal corporation. Therefore, since sanitary districts are municipal corporations, JULIE concludes that they are also municipally owned utilities, contrary to the contention of WSD.

WSD's argument that the Sanitary District Act and Section 14 of the Act support the distinction espoused by WSD also fails, according to JULIE. Contrary to WSD's

contention, JULIE states that Section 2405/1 of the Sanitary District Act does not address the issue at hand, nor specifically provide that sanitary districts are not to be classified as municipalities. At most, JULIE asserts, the Sanitary District Act draws a distinction between towns, cities, and villages; it does not address (nor negate) that WSD falls within the term "municipally owned utility." As for Section 14, which pertains to home rule units of government, JULIE observes that it provides that a home rule unit may not regulate underground utility facilities and that all units of local government, including home rule units, must comply with provisions of the Act. Because WSD is clearly a unit of local government, JULIE argues that Section 14's plain language flies in the face of WSD's contention that it is not required to comply with the Act.

C. Staff's Position

In its response to WSD's request, Staff indicated that it did not object to the ruling sought by WSD. After reviewing JULIE's response and conducting further analysis, however, Staff concludes that the issue is a "close one" and reverses its position in its reply. Staff now concurs with JULIE that WSD should be considered a municipally owned utility.

Because the Act does not define the term "municipally owned utility," Staff states that the question raised by WSD's request is therefore one of statutory construction, involving the correct interpretation of the phrase "municipally owned" in Section 2.2. Staff asserts that the cardinal rule of statutory construction, to which all other rules of construction are subordinate, is to ascertain and give effect to the intent of the legislature. (Nottage v. Jeka, 172 Ill. 2d 386, 392, 667 N.E.2d 91, 93 (1996)) That intent is most reliably ascertained through a consideration of the language of the statute. (Business and Professional People for the Public Interest v. Illinois Commerce Commission, 146 Ill. 2d 175, 207, 585 N.E.2d 1032, 1044 (1991)) In that task, Staff explains that one is to give the words used in the statute their plain and ordinary meaning, unless another meaning is clearly evident. (Texaco-Cities Service Pipeline Co. v. McGaw, 182 Ill. 2d 262, 270, 695 N.E.2d 481, 485 (1998); Henry v. St. John's Hospital, 138 Ill. 2d 533, 541, 563 N.E.2d 410, 414 (1990)) Moreover, Staff continues, a statute should be considered as a whole, with each provision evaluated in relation to every other provision. (Primeco Personal Communications, L.P. v. Illinois Commerce Commission, 196 Ill. 2d 70, 87-88, 750 N.E.2d 202, 212 (2001))

Staff applies these principles of statutory construction to Section 2.2 of the Act and concludes that the section includes WSD within its scope. As used in Section 2.2, Staff maintains that the phrase "municipally owned" is not limited to cities, towns, and villages, but rather should be understood as including within its meaning other units of local government. Staff finds it notable that the Sanitary District Act refers to units established under that statute as "municipal corporations." Staff also concurs in JULIE's reliance on the two Illinois Supreme Court cases previously discussed. According to Staff, the Illinois Supreme Court's characterization of the sanitary districts as "municipal corporations" is consistent with the provisions of other statutes governing special districts in Illinois, which also refer to the entities organized under them as "municipal

corporations." (See, e.g., 70 ILCS 3605/3 (establishing the Chicago Transit Authority as a municipal corporation under the Metropolitan Transit Authority Act) and 310 ILCS 10/2 (authorizing the creation of housing authorities as municipal corporations under the Housing Authorities Act))

Contrary to WSD's contention, Staff maintains that the standard meaning of the adverb "municipally" is broad enough to include within its ambit entities such as WSD. Staff relates that a brief consideration of several dictionary definitions demonstrates that the meaning of "municipal" is not limited to matters relating to cities, towns, and villages, as WSD argues. Black's Law Dictionary, according to Staff, defines "municipal" broadly, as meaning "of or relating to a city, town, or local governmental unit." Staff further states that Black's Law Dictionary defines "municipality" as being synonymous with "municipal corporation," which in turn is defined as "a city, town or other local political entity formed by charter from the state and having the autonomous authority to administer the state's local affairs." (Black's Law Dictionary 1037 (7th ed. 1999)) As a municipal corporation, Staff argues that WSD clearly fits within this definition of "municipal."

Staff states that other reference works define these terms in a similar fashion. For example, Staff reports that the American Heritage Dictionary of the English Language defines "municipal" as meaning "of, relating to, or typical of a municipality," and it defines "municipality" as meaning "a political entity, such as a city, town, or village, incorporated for local self-government." (American Heritage Dictionary of the English Language 1156-57 (4th ed. 2000)) Staff further states that Webster's Third New International Dictionary likewise defines "municipal" as meaning "of or relating to a municipality" or "appointed, elected, or empowered by a municipality." Staff adds that Webster's defines "municipality" as meaning "a primarily urban political unit (as a town or city) having corporate status and usu. powers of self-government." Finally, Staff relates, Webster's defines "municipal corporation" as meaning "a political unit (as a town, city, or borough) created and given quasi-independent status by a nation, state or other major governing authority and usu. endowed with powers of local self-government: a public corporation created by law to act as an agency of administration and local self-government." (Webster's Third New International Dictionary 1487 (1986)) Staff concludes that these sources demonstrate that the words "municipal" and "municipally" have broad meanings, referring generally to units of local government, and are not limited in scope to matters specifically involving cities, towns, and villages, as WSD contends.

Staff is not persuaded by WSD's citation of Section 1 of Article VII of the Illinois Constitution. Staff maintains that the definitions used in Article VII have no application here and do not control the meaning of the terms used in the Act, which makes no reference to Article VII. In support of its position, Staff states that a review of the 1970 constitutional convention proceedings reveals absolutely no intent by the drafters to codify the meanings set forth in Article VII as general definitions for all purposes in Illinois. The drafters' goal, Staff claims, was a much more modest one. In formulating the definitions used in Article VII, Staff relates that the committee responsible for its

creation intended only to establish a consistent set of meanings to be used for understanding and applying the provisions contained in that article. Staff notes that the committee's report to the convention delegates states:

> By using definitions, the proposed Article for the new constitution is clear and direct. It substitutes simple abbreviating terms for repetitive word strings. Identifications are precise and complete, and exclusions are apparent. The text says precisely what the committee intends, without danger that essential words might be omitted inadvertently. (Record of Proceedings, Sixth Illinois Constitutional Convention, Committee Proposals, vol. VII at 1597-98)

In addition, Staff points out that two commentators similarly write, in describing the origin of Section 1 of Article VII, "The section originated in committee discussions when it became evident that the developing Local Government provisions needed a set of key terms which would be used with uniform meanings throughout the article." (Anderson & Lousin, "From Bone Gap to Chicago: A History of the Local Government Article of the 1970 Illinois Constitution," 9 J. Marshall J. Prac. & Proc. 697, 728 (1976)) As these sources make clear, Staff maintains that the drafters of Article VII were not attempting to establish meanings for the terms "municipalities" and "units of local government" that would be applicable in all circumstances in Illinois law—they intended only to formulate a shorthand that could be used with consistency in the provisions of the local government article.

Finally, while the term "municipally" may claim both broad and narrow senses, Staff insists that its meaning in this context should comport with the legislative intent evident in the Act. As noted earlier, Staff states that statutes should be construed as a whole, and their terms not simply viewed in isolation. (Michigan Avenue National Bank v. County of Cook, 191 Ill. 2d 493, 504, 732 N.E.2d 528, 535 (2000)) Staff points out that the Act is designed to promote sound practices in excavation work, and in that manner to protect the personal safety of workers and nearby residents and minimize disruptions in utility service. Consistent with those goals, the Act places a number of responsibilities on owners and operators of underground utility facilities, as well as on excavators working in proximity to those facilities. Accepting WSD's argument, however, would open a wide gap in the Act's coverage, denying protection to facilities operated by the large number of special districts that exist in Illinois—entities that would not readily fit within WSD's narrow and restrictive definition of the term "municipally owned," according to Staff. Such a result, Staff opines, clearly would be inconsistent with the legislative intent apparent in the Act. Staff concludes that the General Assembly's recent amendments to the Act, which broadened its coverage and strengthened its protections, and which gave the Commission enforcement responsibilities for its provisions, would only be thwarted by an interpretation of the phrase "municipally owned" that would leave a large category of entities excluded from the statute's coverage.

III. COMMISSION CONCLUSION

Whether the Commission has jurisdiction over WSD's request for a declaratory ruling is the first matter that must be addressed. Although JULIE is correct in its observation that the effective date of the amendments to the Act giving the Commission authority to oversee certain matters is not until July 1, 2002, the Commission perceives no reason why it would not have jurisdiction now to determine whether the statutory provisions at issue apply to sanitary districts. No party has cited any legal authority suggesting that the Commission lacks jurisdiction. Moreover, resolving this question now avoids or minimizes the "legal limbo" that would otherwise exist if WSD had waited until after July 1, 2002 to make its request. Accordingly, the Commission finds that it has jurisdiction over WSD's May 8, 2002 request for a declaratory ruling.

As for WSD's status as an owner or operator of underground utility facilities, neither JULIE nor Staff disputes WSD's claim that it is not a public utility or mutually owned utility. For the reasons identified by WSD in its discussion of public utilities and mutually owned utilities, the Commission concurs. The only question remaining is whether a sanitary district, as a municipal corporation, is considered a "municipally owned utility" under the Act.

The Act does not define "municipal corporation," "municipality," or "municipally owned." WSD depends heavily on Section 1 of Article VII of the Illinois Constitution in its efforts to assign meaning to these terms. Although the definitions which appear therein suggest that sanitary districts should not be labeled "municipalities," in light of the committee records from the convention which produced the Illinois Constitution, the Commission can not conclude that the drafters intended for the definitions of "municipalities" and "units of local government" in Section 1 to be applicable whenever those terms appeared in Illinois statutes. Nor is there any indication in the Act that the General Assembly intended for the definitions in Article VII, Section 1 of the Illinois Constitution to apply when those terms appeared in the Act. The various dictionary definitions relied upon by JULIE and Staff, while helpful, also fail to provide, in and of themselves, a sufficient basis upon which to resolve this matter.

In the absence of any clearly and directly applicable statutory and/or judicial authority which would aid in determining whether a municipal corporation providing sewer services is a "municipally owned utility," the Commission will turn to the intent of the Act. The title of the Act itself identifies the purpose of the Act: to prevent damage to underground utility facilities. Damage to underground utility facilities is to be avoided since it may put health and property at serious risk. By knowing prior to excavation where underground facilities are located damage can be avoided. The System established under the Act provides excavators with notice of the location of underground facilities. Only by requiring all owners and operators of underground utility facilities to participate in the System will the notification efforts work to adequately inform excavators of the presence of underground utility facilities.[1]

[1] Section 2.2 of the Act exempts the underground utility facilities of electric cooperatives from the definition of "underground utility facilities." Section 3 of the Act provides that utilities operating facilities or

Given the purpose of the Act, the Commission must determine whether it is reasonable to conclude that the General Assembly meant for the Act to apply to municipal corporations such as sanitary districts. Sanitary districts exist to manage sewage, a service which is necessary in today's society. Other entities which are clearly public utilities as defined by the Public Utilities Act and are clearly required to participate in the System provide the same service. Why the General Assembly would deem the damage to a sanitary district's underground facilities less significant than damage to the underground facilities of a public utility managing sewage is unclear. Nevertheless, this would seem to be the inference of WSD's arguments. The "hole" that would be created in the System by granting WSD's request also troubles the Commission. WSD has not offered to fill this information void in any way. Excavators relying upon the System to inform them of the location of buried facilities would not know of any of WSD's facilities and may not even know if they are within WSD. In addition, Section 14 of the Act clearly indicates that all "units of local government" must comply with the Act. WSD, however, somehow reads Section 14 as distinguishing "units of local government," which it acknowledges that it is among and which must comply with the Act, from "municipally owned utilities," which it claims it is not. The Commission does not find WSD's comments regarding Section 14 convincing.

In light of the foregoing, the Commission concludes that it is reasonable and consistent with the intent of the Act to deny the declaratory ruling sought by WSD and to find that sanitary districts, as municipal corporations, are municipally owned utilities under Section 2.2 of the Act that must participate in the System.

IV. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record and being fully apprised in the premises, is of the opinion and finds that:

(1) the Commission has jurisdiction over the subject matter of this proceeding;

(2) the recitals of fact and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;

(3) the General Assembly intended for sanitary districts to be considered municipally owned utilities under the Act; and

(4) the declaratory ruling sought by WSD should be denied.

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community antenna television system facilities exclusively within the boundaries of a municipality with a population of at least one million persons need not participate in the System. The latter exemption accounts for the fact that the City of Chicago operates its own one-call notice system.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Request for Declaratory Ruling made by Wheaton Sanitary District is hereby denied.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: June 24, 2002

Briefs on Exceptions must be received by July 8, 2002.
Briefs in Reply to Exceptions must be received by July 15, 2002.

Administrative Law Judge